IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4434 OF 2004.
IN
FIRST APPEAL NO. 1421 OF 2004.

United India Insurance Co.Ltd. ... Applicant.
Versus.
Bambahadursingh Jagmohansingh & ors. ... Respondents.

Shri P.M.Shah for the Applicant.

Shri T.J.Mendon for the Respondents Nos.1 and 2.

CORAM : ABHAY S.OKA, J.

DATED : 4th May, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. Ad-interim stay is already granted on condition that the decretal amount shall be deposited with the Tribunal. Shri Mendon appearing for the Respondents Nos.1 and 2 states that out of the amount payable under the Award only the principal amount of Rs.3,95,000/- has been deposited and interest amount is not deposited till today. Shri Shah appearing for the Applicant seeks time to deposit the said amount.

2. Shri Mendon submits that the Respondents Nos.1 and 2 may be permitted to withdraw a substantial amount. The said prayer is opposed by Shri Shah appearing for the Appellant. The main ground in the Appeal is that the Appellant-Insurance Company is not liable to pay compensation as the insurered had committed breach of terms and conditions of policy. Therefore, even if the

Appellant-Insurance Company succeeds in the Appeal, the award against the insured will remain. Therefore, the Respondents Nos.1 and 2 are entitled to withdraw a substantial amount.

3. Hence the Civil Application is disposed of by the following order:

i) Ad-interim relief granted on 22nd December 2004 will continue to operate till final disposal of the Appeal subject to condition that the Applicant will deposit the balance decretal amount within six weeks from today. If the balance amount is not deposited within the stipulated period, interim stay will stand vacated.

ii) The Tribunal will permit the Respondents Nos.1 and 2 to withdraw a sum of Rs.1 lakh out of the amount deposited by the Applicant without furnishing security. The withdrawal of the said amount will be subject to final outcome of the Appeal. The Tribunal will also permit the Respondents Nos.1 and 2 to withdraw the remaining amount on furnishing security to the satisfaction of the Tribunal.

Judge.